AFR

2/08/07

(101)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. No.175 OF 2006

PETITIONERS		S.K. Das & others
	Versus	
RESPONDENTS		Chhattisgarh Environment Conservation Board, Raipur & others

POST FOR ORDERS ON 7 August, 2007

Sd/-
DHIRENDRA MISHRA
Judge

102

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. No.175 OF 2006

PETITIONERS

1. S.K. Das, Aged 63 years, Son of Late Shri Hari Charan Das,- C-15, Kendriya Vihar, Noida, Section-51 U.P.
2. M.S. Gujral, Aged 83 years, Son of Late Shri H.S. Gujral,- A-6, New Friends Colony, New Delhi.
3. H.C. Bhasin. Aged 67 years, Son of Late Shri Raja Ram Bhasin,- C-2/7, Safdar Jang Development Area, New Delhi.
4. G.C. Mrig, Aged 69 years, Son of Shri C.R. Mrig,- C-102, Surya Niketan, New Multan Nagar, New Delhi.
5. C.S. Tiwary. Aged 67 years, Son of Shri B.P. Tiwary- MEIL, Monnet Marg, Mandir Hasaud, Raipur (C.G.).
6. Sandeep Jajodia, aged 42 years, son of Shri M.K. Jajodia, 4 Bikaji Cama Place, New Delhi.

All described as the Directors of M/s Monnet Ispat Pvt. Ltd. (Now known as Monnet Ispat And Energy Ltd.) having its registered office at and works at Vilage Kurud, Chand-Rakhuri Marg, Mandir Hasaud, Police Station Mandir Hasaud, Distt. Raipur (C.G.)

Versus

RESPONDENTS

1. Chhattisgarh Environment Conservation Board, Raipur (C.G.) Through Regional Officer, Chhattisgarh Environment Conservation Board, Regional Office, New

103

H.I.G. 9, 10, & 11, Tatibandh, Raipur, District Raipur (C.G.)

2. The State of Chhattisgarh, through the Principal Secretary, Department of Housing and Environment, D.K.S. Bhawan, Mantralaya, G.E. Road, Raipur [CG]
3. M/s Monnet Ispat Pvt. Ltd. (Now known as Monnet Ispat And Energy Ltd.) having its registered office at and works at Vilage Kurud, Chand-Rakhuri Marg, Mandir Hasaud, Police Station Mandir Hasaud, Distt. Raipur.
4. Chief Engineer, (Raipur Region) Chhattisgarh State Electricity Board, Gudhiyari, Police Station, Gudhiyari, Raipur [CG]

Present:

Dr. (Mrs.) Fouzia Mirza, Advocate for the appellants.

Mr. Sudhir Bajpayee, Advocate for respondent No.1.

Mr. G.K. Beriwal, Dy. Advocate General for respondent No.2.

Mr. S.K. Tiwari, Advocate for respondent No.3.

Mr. A.S. Geharwar, Advocate for respondent No.4.

ORDER

(Delivered on 7/08/2007)

Dhirendra Mishra, J

1) By this petition under Section 482 of Cr.P.C. the petitioners have impugned the issuance of summons against them by the learned Chief Judicial Magistrate, Raipur in Complaint Case No.3850/04 vide orders of Annexure P-3.

104

2) Respondent No.1-CG Environment Conservation Board (for short 'the Board') filed a complaint vide Annexure P-1 for taking cognizance under Sections 37 & 40 of the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Act, 1981') read with Section 15 of the Environment Protection Act, 1986 (for short 'the Act, 1986') and Section 34 of the Indian Penal Code against the petitioners herein alleging therein that the petitioners No.1 to 4 are the Directors of respondent No.3-Company, whereas, petitioner No.6 is Managing Director & Petitioner No.5 is the Executive Director of the respondent No.3-Company. Accused persons without obtaining environmental clearance from the Environment & Forest Ministry, Govt. of India has established the industry, which is in violation of Section 7 of the Act, 1986 and the same is punishable under Section 15 of the Act, 1986. Their act is also in violation of Sections 21 & 22 of the Act, 1981. Complainant Board had given them notice under Section 31A of the Act, 1981 and had also requested respondent No.4 herein to disconnect the power supply to the industry, however, the directions issued by the Board were not complied with and thus all the accused persons have committed an offence which is punishable under the provisions of the Act, 1981 and Section 15 of the Act, 1986.

3) Grievance of the petitioners is that learned Chief Judicial Magistrate has issued summons against the petitioners mechanically without applying its mind. There is no specific allegation against the petitioners that they were directly in-charge of and were responsible to the company for the conduct of the business of company. No document has been filed to show the involvement of the petitioner in the commission of the said offence and therefore, the summons issued against the petitioners deserves to be quashed.

105

Reliance is placed on **1990 Cr.L.J. 1856 N.A. Palkivala and another Vs. Madhya Pradesh Pradushan Niwaran Mandal, Bhopal, S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla** reported in **(2005) 63 SCL 93 (SC)** as also order of this High Court rendered in **M.Cr.C. No.2786/05** between **Suresh Goel and others Vs. Chhattisgarh Environment Conservation Board, Raipur and others.**

4) In reply to the instant petition it has been contended by the respondent No.1- Board that petitioner No.6- Sanjeev Jajodiya is the Managing Director of the company, whereas, petitioner No.5-C.S. Tiwary is the Executive Director, as is evident from their descriptions in the complaint. They are directly responsible for the acts of omission and commission of the company and therefore, no specific allegation is necessary in the complaint as against them. So far as petitioner No.2-M.S. Gujral, who is Director of the company is concerned, the Board vide communication dated 8.7.2003 of Annexure R-3 had called upon him not to undertake any work towards the capacity expansion without obtaining clearance from the Environment & Forest Ministry, Govt. of India and without obtaining consent from the Board under the Act, 1981. However, this notice was ignored and the capacity was expanded without obtaining consent from the Board. Along with reply five documents have also been annexed by the respondent No.1-Board.

5) In the matter of N.K. Palkivala (supra) the prosecution of the Chairman and Deputy Chairman of the company under Section 40 was quashed with an observation that they are not the persons directly in-charge of and responsible to the company for the conduct of its business as required under Section 40. Since there was nothing on record to connect

them directly with the business of the company present in that complaint, the prosecution was quashed.

6) In the matter of S.M.S. Pharmaceuticals (supra) the Hon'ble Supreme Court while dealing with the issuance of process under Section 141 of the Negotiable Instruments Act, 1881 in Para 9 held as under:-

> " A perusal of the provisions of sections 291 to 293 of the Companies Act shows that what a board of directors is empowered to do in relation to a particular company depends upon the role and functions assigned to directors as per the memorandum and articles of association of the company. There is nothing which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. It happens that a person may be a director in a company but he may not know anything about the day-to-day functioning of the company. As a director he may be attending meetings of the Board of Directors of the company where usually they decide policy matters and guide the course of business of a company. It may be that a Board of Directors may appoint sub-committees consisting of one or two directors out of the Board of the company who may be made responsible for the day-to-day functions of the company. These are matters which form part of resolutions of the Board of Directors of a company. Nothing is oral. What emerges from this is that the role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. We have discussed about the position of a director in a company in order to illustrate the point that there is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company. A company may have managers or secretaries for different departments, which means, it may have more than one manager or secretary. These officers may also be authorised to issue cheques under their signatures with respect to affairs of their respective departments. Will it be possible to prosecute a secretary of Department B regarding a cheque issued by the secretary of Department A which is dishonoured? The secretary of Department B may not be knowing anything about issuance of the cheque in question.

107

> Therefore, mere use of a particular designation of an officer without more, may not be enough by way of an averment in a complaint. When the requirement in Section 141, which extends the liability to officers of a company, is that such a person should be in charge of and responsible to the company for conduct of business of the company, how can a person be subjected to liability of criminal prosecution without it being averred in the complaint that he satisfies those requirements. Not every person connected with a company is made liable under Section 141. Liability is cast on persons who may have something to do with the transaction complained of. A person who is in charge of and responsible for conduct of business of a company would naturally know why the cheque in question was issued and why it got dishonoured."

7) In the matter of Suresh Goel (supra) the Hon'ble Single Judge of this Court placing reliance on the ratio of law laid down in the matter of SMS Pharmaceuticals (supra) and considering the averments made in the complaint of that case quashed the criminal proceedings against the accused persons against whom necessary averments required under Section 40 of the Act was absent. However, liberty was reserved that if the complainant Board so chooses may file fresh complaint disclosing all those facts, which may fasten criminal liability against the accused persons whose prosecution was quashed.

8) On the other hand learned counsel for respondent Board has reiterated the contention made in reply to the instant petition and detailed in para 4 of this order.

9) I have heard learned counsel for the parties.

10) After perusal of the allegations present in the complaint as also the documents annexed with the complaint, the complainant for the reasons best known to it did not mention about the letter of Annexure R-3 in the complaint and the same is filed for the first time in this proceedings. Whether requirement under Section 40 of the Act, 1985 has been

(108)

fulfilled for the issuance of process to the accused persons is to be adjudged only on the basis of the allegations made in the complaint and the documents which have been annexed along with the complaint. Since documents referred by the respondent Board in their reply was not available before the Chief Judicial Magistrate, therefore, I am of the considered opinion that for the purposes of deciding this petition, the same cannot be looked into.

11) If we apply the requirement of Section 40 of the Act, 1985 in the light of the principle of law laid down in the judgments cited above, we find that necessary averments required under Section 40 of the Act, 1985 against petitioner No.1 to 4 are missing in complaint.

12) In the result, the petition is partly allowed. The petition preferred by petitioner No. 5 & 6, who is Executive Director & Managing Director respectively of the company and admittedly would be in-charge of the company and responsible to the company for conduct of its business and can be proceeded against, is hereby dismissed. However, issuance of process against petitioner No.1 to 4 without there being any specific averments in the complaint that they were in-charge of and responsible for conduct of business of the company and only on the basis of averment that they are the Directors, requirement of section 40 cannot be said to be satisfied and therefore, process issued against the petitioner No.1 to 4 vide orders of Annexure P-3 deserves to be quashed and it is hereby quashed. However, it shall be open to the Board to file fresh complaint, disclosing all necessary particulars, which may fasten the criminal liability against them, if they so desire.

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-